whether the car became overcrowded before or after the plaintiff got on. *McCumber* v. *Boston Elev. Ry. Co.*, 207 Mass. 559, 93 N. E. 698, 32 L. R. A. (N. S.) 475.

TORT—DAMAGES FOR MENTAL ANGUISH CAUSED BY ASSAULT.—Defendant called plaintiff up by phone and spoke in violent language to her. Plaintiff, who was in an enfeebled condition, suffered bodily pain and mental anguish therefrom, and sues for damages. *Held*, she can not recover. *Kramer* v. *Ricksmeier* (Ia. 1913), 139 N. W. 1091.

The consequences of an act, to sustain a recovery, must be such as, in the ordinary course of things, would flow from the act and could be reasonably anticipated as a result thereof. *Braun* v. *Craven*, 175 Ill. 401, 51 N. E. 657, 42 L. R. A. 199. The courts hold unanimously that where the consequences of the defendant's wrong doing are limited to the mental disturbance of the plaintiff, and the wrongdoing is not actionable in behalf of the plaintiff, apart from such consequences, any harm sustained by the plaintiff is deemed *damnum absque injuria*. *Kalen* v. *Terre Haute Ry.*, 18 Ind. App. 202, 47 N. E. 694, 63 Am. St. R. 343; *Turner* v. *Great Nor. Ry.*, 15 Wash. 213, 46 Pac. 243; *Zabron* v. *Cunard Steamship Co.*, 151 Ia. 345, 131 N. W. 18, 34 L. R. A. (N. S.) 751. However, in cases where such mental disturbance causes physical derangement, the holdings are irreconcilable. Some courts deny liabilty, *St. Louis etc. Ry.* v. *Bragg*, 69 Ark. 402, 64 S. W. 226, 86 Am. St. Rep. 206; *Braun* v. *Craven, supra; Kansas City Ry.* v. *Dalton*, 65 Kan. 661, 70 Pac. 645; *Morse* v. *Chesapeake Ry.*, 117 Ky. 11, 77 S. W. 362; *Ward* v. *West Jersey Ry.* 65 N. J. L. 383, 47 Atl. 561; *Nelson* v. *Crawford*, 122 Mich. 466, 81 N. W. 335, 80 Am. St. Rep. 577; *Arthur* v. *Henry*, 157 N. C. 393, 73 S. E. 211. Other courts hold that there is a liability if the plaintiff can show, not only that defendant's conduct was wrongful towards someone, but that it was a breach of a legal duty owing to plaintiff by defendant. *Dulieu* v. *White*, [1901], 2 K. B. 669, 70 L. J. K. B. 837; *Watson* v. *Dilts*, 116 Ia. 249, 89 N. W. 1068; *Ford* v. *Schliessman*, 107 Wis. 479, 83 N. W. 761; *Gulf Col. etc. Ry.* v. *Hayter*, 93 Tex. 239, 54 S. W. 944, 77 Am. St. Rep. 856, 47 L. R. A. 325. The principal case further holds that the action cannot be sustained on the theory that an assault is charged. Mere words, even at short range, do not constitute an assault. *Irlbeck* v. *Bierl*, 101 Ia. 242, 67 N. W. 400; *Grayson* v. *St. Louis Transit Co.*, 100 Mo. App. 60, 71 S. W. 730. In the principal case the words were spoken over the telephone. It is significant that the court expressly refrained from intimating an opinion as to the liability of the defendant if he had known the condition of the plaintiff was so enfeebled that she could not endure such speech.

TRIAL—MOTION TO DISMISS AFTER OPENING STATEMENT.—In an action to recover commission for the sale of certain real estate, the petition alleged that the plaintiff had sold the property on commission pursuant to an agreement made with the defendant owner. The counsel for the plaintiff in the opening statement to the jury stated that he would establish the alleged contract by virtue of a certain conversation, occurring between plaintiff and defendant, and gave the conversation in detail. On motion of the defendant,

the trial court dismissed the petition on the ground that the opening statement did not show proof sufficient to support the allegation. The plaintiff appealed from the court's ruling. *Held,* when the counsel in the opening statement gives in detail all the evidence that he proposes to offer in support of the allegation in the petition and is given an opportunity to explain and qualify his statement, and it is apparent that the facts proposed to be shown would not sustain the petition, it is the duty of the trial court to sustain a motion for dismissal. *Cornell* v. *Morrison* (Ohio 1912), 100 N. E. 817.

The question raised in the principal case is one on which the courts are not agreed. For a discussion of the various rules on the proposition involved see 9 MICH. L. REV. 271.

WILLS—ESTATES TAIL.—Testator had five children, one of whom, named Mary, was married. In 1893 he devised a specific tract of land to Mary and the heirs of her body. Similar devises were made in favor of the other children. The will contained a residuary clause in which the testator gave to his children share and share alike, "all other property, goods, chattels, moneys, stocks, credits and effects" of which he might die seized. The testator died in 1895 leaving surviving him the five children. In 1909 Mary died without having children and was survived by her husband. The four children now surviving brought ejectment against Mary's husband. *Held,* that each of the children took an estate tail, and that Mary acquired by the residuary clause in the will an undivided fifth interest in the reversion in fee expectant on her death without issue, which interest on her death passed to her husband. *Ewing* v. *Nesbitt* (Kan. 1913), 129 Pac. 1131.

It is very rare to find a jurisdiction at the present time which recognizes the estate tail as it was known at the common law without some statutory modification. In some states the estate tail is converted into a fee simple, while in others the first taker gets a life estate. For a grouping of the states under the various statutory modifications see BREWSTER, CONVEYANCING, § 143. In 1855 by a statute of the Territory of Kansas the common law estate tail was converted into a life estate in the first taker. In 1859, however, the Territorial Legislature completely revised the act of 1855 and restored the estate tail with its characteristics as known at the common law. The opinion in the principal case is very interesting because of its accurate review of the nature and origin of estates tail and their introduction into this country. The court pointed out that such estates were in harmony with the wants and conditions of the people of Kansas, and that the danger of a perpetuity was prevented by the donee in tail giving a deed of the land which barred the remainderman, just as a fine or a common recovery at the common law had a similar effect, by converting the estate tail into a fee simple absolute. Therefore, if the testator's daughter Mary in the principal case had chosen in her lifetime to make a conveyance of the land devised to her, she would thereby have barred herself, her issue, and her father's reversion.

WITNESSES — PRIVILEGE AGAINST SELF-INCRIMINATION. — One Lloyd was charged with conspiracy to cheat and defraud certain insurance companies. Defendant moved to quash the information upon the ground that he had